



A.S.(MD).No.206 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S(MD)No.206 of 2011

and

M.P(MD) No.1 of 2011

M.Meenatchi

... Appellant/Plaintiff

-vs-

1. T.Lilly (died)

... Respondent/Defendant

2. Thangaraj

3. Vaiyola

4. Dheenadhayalan

5. Minor.Jaisingh

... Respondents

(Minor 5th respondent represented by his father and guardian Thangaraj/2nd respondent)

(Respondents 2 to 5 are brought on record as Legal Heirs of the deceased sole respondent vide order of this Court dated 14.02.2023 made in C.M.P(MD) Nos.1181, 1182 and 1183 of 2018 in A.S.(MD) No.206 of 2011)

PRAYER: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 19.07.2011 passed in O.S.No.30 of



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2010 on the file of the I Additional District Judge, Madurai.

For Appellant : Mr.R.Parthiban
For Respondents : No appearance
2 to 5

J U D G M E N T

This First Appeal has been filed by the appellant as against the decree and judgment passed in O.S.No.30 of 2010 on the file of the I Additional District Judge, Madurai, dated 19.07.2011, wherein, the appellant herein has filed a suit for specific performance and the same was dismissed.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the trial Court.

3. The brief averments made in the plaint are as follows:

The suit property originally belonged to one V.Sundaraj, who sold the suit property through registered sale deed dated 13.08.1993 to the defendant and the plaintiff became an othithar under the defendant in respect of the suit property on and from 22.04.2008 onwards. The defendant borrowed a sum of Rs.1,50,000/- on the same day from the plaintiff and agreed to hand over the suit property and repayment is fixed for three years and executed an

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unregistered othi agreement. In the first week of November, 2008 the defendant approached the plaintiff to sell the property without encumbrances for a sum of Rs.10,00,000/- and agreed to get back the othi agreement from the plaintiff after payment of the said amount. On 12.11.2008, the defendant received an advance of Rs.6,50,000/- and entered into an agreement for sale in respect of the suit property for a sum of Rs.10,00,000/- and agreed to complete the sale within a period of 4 months. Thereafter, the defendant has not discharged the encumbrances and demanded another 10 months time to complete the sale and the encumbrance regarding the site belonging to the Singampidari Temple is delayed. The plaintiff is liable to pay the balance amount of Rs.3,50,000/- to the defendant towards the balance consideration. The plaintiff sent a lawyer notice, dated 12.02.2010, requesting the defendant to receive the balance consideration of Rs.3,50,000/- and to execute the sale deed. The defendant did not send any reply and not performed his part of the contract. Hence, she filed a suit for specific performance.

4. The brief averment in the written statement filed by the defendant are as follows:

The suit is not maintainable either in law or on facts. The averments



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made in the plaint are denied as false. In fact, the plaintiff had taken the suit property on lease in the year 2008 through unregistered othi agreement, dated 22.04.2008. The defendant had borrowed a sum of Rs.1,50,000/- from the plaintiff to improve her family and to defray her sundry debts, she agreed to hand over the suit property and the period for repayment was fixed as three years. After othi agreement period, the plaintiff and the defendant cancelled the above said Othi and thereafter they entered into a sale agreement in respect of the suit property. At that time, there was no encumbrance over the suit property and after perusing the title deed of the property only the plaintiff has entered into an agreement. The plaintiff was not ready and willing to perform her part of the contract. As per the contract, the plaintiff has to pay the balance amount within four months and she has to get the sale deed during the four months period. The plaintiff had not contacted the defendant and called upon her to receive the balance amount and the plaintiff has no sufficient amount to pay the balance sale consideration. The plaintiff was not ready and willing to perform her part of the contract as per the sale agreement. Since the plaintiff was not ready to perform the contract, the suit is liable to be dismissed.



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5. Based on the above said pleadings, the trial Court has framed following issues:

1. Whether the plaintiff is ready and willing to perform her part of contract within the stipulated time?

2. Whether the sale agreement becomes automatically invalid and the advance amount was forfeited?

3. Whether the plaintiff is entitled for a judgment and decree of specific performance on the strength of the sale agreement dated 12.11.2008?

4. Whether the plaintiff is entitled for an order of permanent injunction restraining the defendants from in any way disturbing the peaceful possession?

5. To What relief the plaintiff is entitled to?

6. Before the trial Court, on the side of the plaintiff, P.W1 and P.W.2 were examined and documents Ex.A1 to A9 were marked. On the side of the defendant, the defendant examined herself as D.W.1 and documents Ex.B1 and B.2 were marked. After analyzing the evidence adduced on either side, the trial Court dismissed the suit by holding that the plaintiff was not ready and willing to perform the contract.



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7. As against the decree and judgment, the appeal has been filed on the following grounds:

1. The decision of the trial Court is against law, weight of evidence and the probabilities of the case.

2. The trial Court erred in dismissing the suit for Specific Performance filed by the appellant and ought to have decreed the suit in entirety.

3. The trial Court failed to note that the existence of the superstructure is not in dispute in the suit and the same has been admitted by both parties.

4. The trial Court erred in stating that the plaintiff and the defendant failed to establish that there is a building existed between 1998 to 2009 when there is no dispute regarding the existence of the superstructure.

5. The trial Court erred in considering Ex.B1 Encumbrance Certificate to give a finding regarding encumbrance of the property and failed to consider that the sale agreement was only with respect to Superstructure and not with respect to site.

6. The trial Court erred in stating that the plaintiff had not filed any document to show that she is having the balance of sale consideration of Rs.3,50,000/-.

7. The trial Court erred in not considering the fact that the plaintiff had paid major portion of the sale



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consideration and hence ought to have held that the plaintiff was ready and willing to perform her part of the contract.

8. The trial Court failed to consider that the time is not the essence of the contract and failed to note that the respondent had not taken any steps till the appellant issued lawyer notice demanding specific performance of the contract.

9. The trial Court ought to have ordered for return of the advance amount with the interest to the plaintiff along with damages.

10. The trial Court failed to consider that in a suit for specific performance only enforcement of the agreement between the parties is to be taken into consideration and not the title dispute for the property.

11. The trial Court erred in stating that the possession of the plaintiff is unlawful due to the cancellation of the othi deed.

12. The trial Court has not properly appreciated the oral and documentary evidence placed before the Court.

8. During the pendency of the appeal, the appellant has filed the



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petition to amend the prayer in the plaint for the relief of return of advance amount and the same was allowed.

9. The learned counsel appearing for the appellant would contend that the plaintiff has already entered into an agreement for sale of property and on the date of agreement itself the plaintiff had paid a sum of Rs.6.50,000/- towards advance amount. Four months time was fixed for completion of contract since there were so many encumbrances in the property. The defendant requested time to clear the encumbrance and thereby there was a delay on the party of the defendant. The defendant evaded clearing the encumbrances in the property and also evaded execution of the sale deed and therefore, the plaintiff issued notice to the defendant dated 12.02.2010 requesting her to come forward to execute the sale deed after clearing the encumbrances. Since, the defendant failed to do so, the plaintiff has filed the suit. Before the trial Court, the plaintiff was examined as P.W.1 and another witness was examined as P.W.2 to prove that the defendant has executed the sale agreement and received advance amount, but the defendant evaded to execute the sale deed and the plaintiff was always ready and willing to perform her part of the contract. However, the trial Court erroneously



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dismissed the suit. Now, the appellant has amended the prayer before this Court, praying this Court to pass the money decree for return of advance amount. Therefore, the decree passed by the trial Court is liable to be set aside.

10. There was no representation for the respondent. Already notice was served to the respondents and their names were also printed in the cause list, even then there is no representation for respondents.

11. This Court heard the learned counsel for the appellant and perused the materials on record, upon hearing the learned counsel for the appellant and perusing the records, the points for determination in this appeal are:

(i) Whether the plaintiff was always ready and willing to perform her part of the contract within the stipulated time?

(ii) Whether the plaintiff is entitled to the relief of specific performance?

(iii) Whether the plaintiff is entitled for return of advance amount?

(iv) Whether the plaintiff also is entitled to relief of permanent injunction?



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(v) Whether the judgment and decree passed by the trial Court is sustainable in law?

(vi) Whether the appeal is liable to be allowed or not?

Point No.1:

12. In this case, the plaintiff as well as the defendant had entered in to agreement for sale on 12.11.2008 and the plaintiff paid advance amount of Rs.6,50,000/- to the defendant and the time for completion of the contract made in the suit agreement was 4 months and these facts are undisputed facts. It is an admitted fact that within four months, parties have not executed the sale as per the contract. According to the appellant, there are so many encumbrances in the suit property and thereby to clear encumbrances the defendant took time. The plaintiff is none other than the lessee of the suit property and she was very well aware of the encumbrances and knowing the same only she has entered into the agreement with the defendant. Moreover no documents produced by the plaintiff to prove what are all the encumbrances on the date of agreement. Therefore, the reasons stated by the plaintiff that due to the encumbrances in the suit property there is delay in getting the sale deed is not acceptable. Further, the plaintiff has not sent notice within four months expressing her readiness and willingness to

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perform her part of the contract and the plaintiff has issued notice only on 12.02.2010. Therefore, the plaintiff was not ready and willingness to perform her part of the contract. The trial Court also, in this context, after elaborate discussion rightly held that the plaintiff was not ready and willing to perform her part of the contract. Hence, this point is answered to the effect that the plaintiff was not always ready and willing to perform her part of the contract.

Point No.2:

13. The plaintiff has filed the suit for specific performance of contract, the main requirement to grant relief of specific performance is that the plaintiff has to prove the readiness and willingness. But this Court in the previous point decided that the plaintiff failed to prove her readiness and willingness to perform her part of contract. Since the Court in the previous point has answered that the plaintiff was not always ready and willing to perform her part of the contract, this point is answered to the effect that the plaintiff is not entitled to the relief of specific performance.

Point No.3:

14. Both the parties admitted the execution of agreement of sale and of



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payment of advance of Rs.6,50,000/-. The defendant also did not deny the receipt of the said amount, but her contention is since the plaintiff was not ready and willing to perform her part of the contract, the plaintiff is not entitled for specific performance. According to the defendant, since the plaintiff was not ready to get sale deed within the four months time as fixed in the agreement the advance amount was forfeited. But the trial Court already decided that the advance amount cannot be forfeited due to the delay on the part of the plaintiff. As against the said decision no any appeal or cross objections filed by the defendant. Therefore, the defendant cannot escape from his liability to pay the advance amount. Therefore, as per the admission made by the defendant that she received the advance sale price of Rs.6,50,000/- and the same was not repaid, the plaintiff is entitled to the amount. Therefore, the plaintiff is entitled to the relief of recovery of money for the advance amount of Rs.6,50,000/-. Thus the point is answered.

Point No.4:

15. The plaintiff sought for the relief of permanent injunction in respect of the suit property and there is no evidence to the effect that there is an interference by the defendant in respect of the property. It is an admitted fact



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that initially the plaintiff entered into the premises based on the othi and the period of othi is three years and after three years from the date of othi the plaintiff has entered into the sale agreement and is in possession of the property. The plaintiff herself admitted that the Othi was cancelled and there is no evidence to show that defendant made any steps to disturb the plaintiff possession. Therefore, the trial Court has rightly held that in this suit the plaintiff is not entitled to permanent injunction since her possession is not lawful. Thus the point is answered.

Point Nos.5 and 6 :

16. The plaintiff has sought for the relief of specific performance and for permanent injunction. The trial Court framed proper issues and answered the issues properly. Based on the evidence adduced by both the parties. After considering the evidences adduced on both sides held that the plaintiff was not ready to perform her part of the contract and declined to grant the relief of specific performance and dismissed the suit by reasoned judgment. Before the trial Court the plaintiff has not sought for any relief with regard to repayment of advance amount and considering the amended prayer for return of advance amount, this Court also in previous paragraphs decided that the defendant is



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liable to pay the advance amount. The judgment passed by the trial Court in respect of the specific performance and permanent injunction are liable to be confirmed, since there is no infirmity or perversity. Before the trial Court since there is no prayer with regard to return of advance amount, the trial Court has not considered the same and in view of the amendment in the prayer, this Court has held that the plaintiff is entitled to advance amount.

17. As far as the interest on the advance amount is concerned, the plaintiff herself admitted that the othi was cancelled and thereafter, paid a sum of Rs.6,50,000/- and there is no rent paid to the house which was occupied by the plaintiff and the defendant also not raised any plea in respect of said right. However, considering the fact that plaintiff is residing in the suit property, this Court is inclined to award nominal interest at the rate of 6% p.a from the date of receipt of advance amount till the date of realization of the amount.

18. During the pendency of the first appeal the first respondent/ defendant died and her legal heirs were impleaded as respondents 2 to 5 and since this Court passed a money decree, the legal heirs of the first respondent/



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defendant are liable to pay the same from the estate of the first respondent/defendant. Accordingly, these points are answered.

19. In the result, the First Appeal is partly allowed and the decree and judgment passed in O.S.No.30 of 2010 on the file of the I Additional District Judge, Madurai, dated 19.07.2011 is modified to the effect that the plaintiff is entitled to decree for recovery of money as against the defendant for a sum of Rs.6,50,000/- with interest at the rate of 6% p.a from the date of receipt of advance amount till the date of realization and the respondents/defendants 2 to 5 are liable to pay the said amount from the estate of 1st respondent/defendant. In respect of the reliefs of specific performance and permanent injunction the judgment and decree of the trial Court are confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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- To
1. The I Additional District Judge,
Madurai.
 2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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